

JJP

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

BARBARA SCHWAB et al., individually and  
on behalf of all others similarly situated,

Plaintiffs,

v.

PHILIP MORRIS USA, INC. et al.,

Defendants.

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
Civil Action No. CV 04-1945  
★ FEB 28 2005 ★  
BROOKLYN OFFICE

**MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS  
REPRESENTATIVES AND CO-LEAD COUNSEL**

Plaintiffs bring claims under the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1962(c) and (d), on behalf of a class of individuals who were defrauded into purchasing "light" cigarettes by Defendants' decades-long scheme to portray "light" cigarettes as safer and less harmful than "regular" cigarettes. Defendants knew, however, that "light" cigarettes were not safer or less harmful than "regular" cigarettes and may, in fact, be more hazardous than "regular" cigarettes. As a result of this fraud, Plaintiff have been harmed financially and seek to recover economic damages unrelated to personal injury.

Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs hereby move for certification of this action as a class action and for the appointment of class counsel. Plaintiffs respectfully request that the Court certify the following class:

All United States residents who purchased in the United States, not for resale, cigarettes labeled as "Lights" and/or "Light" (collectively "light cigarettes") that were manufactured and/or sold by Defendants during the period commencing on the first date that

Defendants began selling light cigarettes until the date trial commences, and who are not, as of the date of trial, members of a certified state class seeking economic damages stemming from their purchases of light cigarettes. Excluded from the Class are individuals who are directors and officers of the Defendants' corporations, their parents, subsidiaries and/or affiliates, the Judge handling this case and members of his or her immediate family and the Judge's staff.

As set forth in Plaintiffs' Memorandum of Law (filed under seal), the proposed class and the named plaintiffs satisfy all of the Rule 23 requirements. The class and named plaintiffs meet the Rule 23(a) requirements of numerosity, commonality, typicality and adequacy. In addition, the class also satisfies the Rule 23(b)(3) requirements that common issues predominate and can be shown through common proof and that a class action is a superior method of trying these claims. Finally, Plaintiffs' injunctive claims are proper for certification under Rule 23(b)(2).

Plaintiffs also respectfully request that this Court appoint Barbara Schwab, Susan Bailey, Barbara Bishop, Trevor Campbell, Fergal Furlong, David Rogers, Patricia Scocozza, and Jim Sherman as representative plaintiffs and appoint Cohen, Milstein, Hausfeld & Toll, P.L.L.C. and Finkelstein, Thompson, & Loughran as Co-Lead Class Counsel in accordance with Federal Rule of Civil Procedure 23(g). The grounds for this motion are set forth in detail in Plaintiffs' Memorandum of Law.

Dated: February 28, 2005

Respectfully submitted,



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Linda P. Nussbaum (LN-9336)  
Susan R. Schwaiger (SS-8653)  
Sean K. McElligott (SM-4770)  
COHEN, MILSTEIN, HAUSFELD  
& TOLL, P.L.L.C.  
150 East 52nd Street  
Thirtieth Floor  
New York, NY 10022-6017  
Phone: (212) 838-7797  
Fax: (212) 838-7745

Herbert E. Milstein  
Michael D. Hausfeld  
Lisa M. Mezzetti  
Paul T. Gallagher  
Douglas J. McNamara  
James J. Pizzirusso  
COHEN, MILSTEIN, HAUSFELD  
& TOLL, P.L.L.C.  
1100 New York Avenue, N.W.  
West Tower, Suite 500  
Washington, D.C. 20005  
Phone: (202) 408-4600  
Fax: (202) 408-4699

Burton H. Finkelstein  
William P. Butterfield  
Richard M. Volin  
Hilary K. Ratway  
FINKELSTEIN, THOMPSON & LOUGHRAN  
1050 30th Street, N.W.  
Washington, DC 20007  
Phone: (202) 337-8000  
Fax: (202) 337-8090

**LEAD ATTORNEYS FOR PLAINTIFFS**

**OF COUNSEL:**

Jonathan Alpert  
THE ALPERT LAW FIRM  
5920 River Terrace  
Tampa, FL 33604  
Phone: (813) 223-4131  
Fax: (813) 228-9612

David F. Sorenson  
BERGER & MONTAGUE, P.C.  
1622 Locust Street  
Philadelphia, PA 19103  
Phone: (215) 875-5705  
Fax: (215) 875-4604

Van Bunch  
BONNETT, FAIRBOURN,  
FRIEDMAN & BALINT, P.C.  
57 Carriage Hill Overlook  
Signal Mountain, TN 37377  
Phone: (423) 886-9736  
Fax: (602) 274-1199

Gary M. Farmer, Jr.,  
FREEDLAND, FARMER,  
RUSSO & SELLER  
2665 Executive Park Dr., Suite 3  
Weston, FL 33331  
Phone: (954) 467-6400  
Fax: (954) 670-2530

G. Martin Meyers  
LAW OFFICES OF G. MARTIN MEYERS  
35 West Main Street, Suite 106  
Denville, NJ 07834  
Phone: (973) 625-0838  
Fax: (973) 625-5350

Lisa J. Rodriguez  
TRUJILLO, RODRIGUEZ & RICHARDS, LLC  
8 Kings Highway West  
Haddonfield, NJ 08033  
Phone: (856) 795-9002  
Fax: (856) 795-9887

Thomas V. Urmy  
Edward F. Haber  
SHAPIRO, HABER & URMY, LLP  
53 State Street  
Boston, MA 02109  
Phone: (617) 439-3939  
Fax: (617) 439-0134

Stephen Sheller  
SHELLER, LUDWIG & BADEY  
1528 Walnut Street, 3rd Floor  
Philadelphia, PA 19102  
Phone: (215) 790-7300  
Fax: (215) 546-0942

Russell Smith  
E. Bryan Nace  
503 Key Building  
159 S. Main Street  
Akron, Ohio 44308  
Phone: (330) 434-7167  
Fax: (330) 434-1795

Gerson Smoger  
SMOGER & ASSOCIATES, LLP  
3175 Monterey Blvd., Suite 3  
Oakland, CA 94602  
Phone: (510) 531-4529  
Fax: (510) 531-4377

Esther Berezofsky  
WILLIAMS, CUKER & BEREZOFSKY  
210 Lake Drive East, Suite 101  
Cherry Hill, NJ 08002  
Phone: (856) 667-0500  
Fax: (856) 667-5133